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Mark Scheme (Results)

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Pearson BTEC Nationals in Applied Law

Unit 3: Applying the Law (20170K)

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Unit 3: Applying the Law (20170K)

General marking guidance

- All learners must receive the same treatment. Examiners must mark the first learner in exactly the same way as they mark the last.
- Mark grids should be applied positively. Learners must be rewarded for what they have shown they can do rather than be penalised for omissions.
- Examiners should mark according to the mark grid, not according to their perception of where the grade boundaries may lie.
- All marks on the mark grid should be used appropriately.
- All the marks on the mark grid are designed to be awarded. Examiners should always award full marks if deserved. Examiners should also be prepared to award zero marks, if the learner's response is not rewardable according to the mark grid.
- Where judgement is required, a mark grid will provide the principles by which marks will be awarded.
- When examiners are in doubt regarding the application of the mark grid to a learner's response, a senior examiner should be consulted.

Specific marking guidance

The mark grids have been designed to assess learners' work holistically. Rows in the grids identify the assessment focus/outcome being targeted. When using a mark grid, the 'best fit' approach should be used.

- Examiners should first make a holistic judgement on which band most closely matches the learner's response and place it within that band. Learners will be placed in the band that best describes their answer.
- The mark awarded within the band will be decided based on the quality of the answer in response to the assessment focus/outcome and will be modified according to how securely all bullet points are displayed at that band.
- Marks will be awarded towards the top or bottom of that band depending on how they have evidenced each of the descriptor bullet points.

Mark Grid for Unit 3: Applying the Law (20170K)

Total Marks for unit 20170K: 72 (this grid will be applied twice)

Assessment focus	Band 0	Band 1	Band 2	Band 3	Band 4
	0	1-2	3-4	5-6	7-8
Selection and understanding of legal principles relevant to context	No rewardable material.	• Selection of some basic legal principles. • Little understanding of the law relevant to the context. • Limited use of relevant authorities in the context of the scenario.	• Selection of some appropriate legal principles. • Some understanding of the law relevant to the context. • Uses some relevant authorities in the context of the scenario.	• Selection of appropriate legal principles. • Clear understanding and linkage to the law and context. • Uses a variety of appropriate authorities in the context of the scenario.	• Selection of appropriate legal principles. • Thorough understanding relevant to the context, showing a detailed knowledge and understanding of the relevant law. • Uses a wide variety of appropriate authorities in the context of the scenario.

Mark Grid for Unit 3: Applying the Law (20170K)

Total Marks for unit 20170K: 72 (this grid will be applied twice)

Assessment focus	Band 0	Band 1	Band 2	Band 3	Band 4
	0	**1-2**	**3-4**	**5-6**	**7-8**
Application of legal principles and research to information provided	No rewardable material.	• Demonstrates limited application of the relevant law to the scenario. • Limited use of precedents/ authorities in the context, drawing on research.	• Demonstrates some application of the relevant law to the scenario. • Selects and applies some relevant precedents/ authorities in context, drawing on research.	• Demonstrates competent application of the relevant law to the scenario. • Selects and applies relevant precedents / authorities in context, drawing on research.	• Demonstrates detailed and thorough application of the relevant law to the scenario. • Selects and applies relevant precedents/ authorities throughout in context, drawing on research.

Mark Grid for Unit 3: Applying the Law (20170K)

Total Marks for unit 20170K: 72 (this grid will be applied twice)

Assessment focus	Band 0	Band 1	Band 2	Band 3	Band 4
	0	1-2	3-4	5-6	7-8
Analysis of legal authorities, principles and concepts	No rewardable material.	• Analysis is limited. • Analysis lacks a grasp of the concepts in the context of the scenario. • Alternatives are stated but with no supporting evidence.	• Some analysis. • Analysis demonstrates a basic grasp of the concepts and their relevance in this scenario. • Alternatives are stated with some supporting evidence.	• Linked statements provide a logical analysis of the evidence in the scenario. • Analysis demonstrates a good grasp of the concepts and their relevance in this context. • Alternatives are detailed, making use of supporting evidence.	• Detailed and coherent statements provide a clear and logical analysis of a wide range of relevant evidence in the scenario. • Analysis demonstrates a thorough grasp of the concepts and their relevance in this context. • Alternatives are considered in depth, using appropriate supporting evidence.

Mark Grid for Unit 3: Applying the Law (20170K)

Total Marks for unit 20170K: 72 (this grid will be applied twice)

Assessment focus	Band 0	Band 1	Band 2	Band 3	Band 4
	0	1-2	3-4	5-6	7-8
Evaluation and justification of decisions	No rewardable material.	• Interpretation of some legal principles/authorities but is generic, lacking detail and relevance to the context. • Limited evaluation of the outcome of the case using legal principles, coming to a basic conclusion.	• Interpretation of some principles/authorities relevant to the context. • Some evaluation of the outcomes of the case using legal principles/authorities, coming to a conclusion that is justified in part.	• Interpretation of main principles/authorities relevant to the context. • Evaluation of the outcomes of the case using principles /authorities, coming to a conclusion that is mostly but not wholly justified.	• Detailed interpretation of the main principles/ authorities relevant to the context. • Detailed evaluation of the outcomes of the case using principles/ authorities and coming to a fully justified conclusion.

Mark Grid for Unit 3: Applying the Law (20170K)

Total Marks for unit 20170K: 72 (this grid will be applied twice)

Assessment focus	Band 0	Band 1	Band 2	Band 3	Band 4
Presentation and structure	**0**	**1**	**2**	**3**	**4**
	No rewardable material.	• Lacks professional format and structure, leading to lack of clarity. • Language is inappropriate for audience.	• Has a basic professional format and structure. • Language is sometimes appropriate for audience.	• Has a logical structure and format that is generally clear and professional. • Language is appropriate for audience.	• Is well written, uses clear language, has a logical and professional format and structure. • Language is appropriate for audience throughout.

Activity 1 - Indicative content

Activity 1: Homicide

Identify the relevant homicide offence (gross negligence manslaughter) and demonstrate an understanding of the legal principles relating to gross negligence manslaughter. Recognise the relevant authorities.

Gross negligence manslaughter as set out in *R v Adomako*

- Duty of care: originally from *Donoghue v Stevenson* (neighbour principle).
- Breach of duty of care: ordinary rules of negligence apply – would the reasonable man with the same skills have done the same in the same situation – *R v Holloway.* It is an objective test and is based on the defendant's position at the time of the breach.
- Causing death: ordinary rules of causation apply here - factual causation using the 'but for' test (*R v White*) and legal causation where D must be a more than minimal cause (*de minimis test – R v Pagett)*.
- Gross negligence:
- *R v Bateman* 'such disregard for the life and safety of others as to amount to a crime against the state deserving of punishment.'
- Risk of death – *R v Misra and Srivastava* – the breach of duty must be so bad that it risked death, not just the health and safety of the victim.

Apply the law to Amy

- Amy has a duty of care towards anyone that uses the ride as they will be closely and directly affected by her omissions in failing to perform ride maintenance.
- She has breached her duty by:
- falling below the standard of the reasonable ride operator
- not having the rides serviced at the recommended intervals
- failing to respond to issues relating to the broken harness.
- The breach of duty has caused death as it is due to the poor maintenance of the ride (specifically the broken harness), that Beth Jones fell out of it and died.
- She has shown such disregard for the life and safety of others (by not checking that the rides were safe), that a jury would be likely to find this breach 'gross'.
- There is an obvious risk of injury and not just death from failing to repair a broken safety harness and not maintaining a ride.

Analyse the likely outcomes of the case

Amy is likely to be found guilty of gross negligence manslaughter. She had a duty of care towards everyone using her ride, including Beth. She has clearly breached her duty as she has failed to maintain the ride so that it is safe for passengers. This breach caused Beth's death. Amy showed such a disregard for her life and safety that a jury would be likely to see this as gross negligence.

Credit any evaluative points

- It is criticised for following the rules of civil law in establishing guilt in criminal law.
- It has been said to be unfair that learners are treated the same as professionals.
- The test for gross negligence manslaughter is said to be a circular one, leading to inconsistent decisions being made by the courts

Credit alternative lines of reasoning where properly supported.

Identify the relevant police power that is being exercised (arrest) and demonstrate an understanding of the legal principles relevant to arrest.

- The police power of arrest without a warrant is contained in s24 Police and Criminal Evidence
- Act 1984 (as amended by s110 of the Serious Organised Crime and Police Act 2005). They are allowed to arrest anyone where they are involved or suspected of involvement in a crime and their arrest is necessary or they have reasonable grounds for believing the arrest is necessary.
- The arrestee must be told they are under arrest and why (s28 PACE and Taylor v Chief Constable of Thames Valley Police).
- The arrest must be necessary by reference to the necessity tests.
- The arrestee must be cautioned. 'you do not have to say anything but it may harm your defence if you do not mention when questioned, something which you later rely on in court. Anything you do say may be given in evidence.'

Apply the law to Amy

- Whilst they told Amy she was being arrested; they should have told her the reason why.
- Amy's arrest was necessary to allow for the investigation of Beth's death.
- The police should have read Amy the caution to inform her of her rights.

Analyse the likely outcomes

It is likely that the police will have behaved unlawfully as they did not tell her why she was under arrest or why it was necessary. Furthermore, they did not give her the caution.

Activity 2 – Indicative content

Activity 2: Offences Against Property

Identify the relevant property offence for the scenario (theft) and demonstrate an understanding of the law relating to theft. Recognise any relevant authorities.

Theft is defined under s1 Theft Act 1968 and is defined as the dishonest appropriation of property belonging to another with intention to permanently deprive the other of it.

Actus reus

- Appropriation – this is defined in s3 Theft Act as any assumption of the rights of the owner. Only one of the rights of the owner needs to be appropriated (*Morris*)**.**
- Property – from s4, is money and all other property, real or personal, things in action and other intangible things. **NB – learners do not have to explain all the elements of property as not all are relevant to the scenario.**
- Belonging to another, from s5, means it belongs to anyone with possession or control of it, or having a proprietary interest in it. s5(4) states property can be in D's possession but still does not belong to him if he received it by mistake. (*AGs Ref 1 of 1983).*

Mens rea

- **Dishonesty**, from s2, is not defined, it only contains situations in which the defendant is not considered dishonest. s2(1) states D is not dishonest if he believes: (a) he has a legal right to deprive the other of it (*Holden*); (b) the owner would consent to the appropriation; or (c) he appropriates the property in the belief that the owner cannot be traced by taking reasonable steps (*Small*). If the honesty situations do not apply, then the test from *Ivey v Genting Casinos* ***(***as confirmed in *R v Barton and Booth****)*** must be used. This asks two questions 1) What was the actual state of D's knowledge or belief of the facts? and 2) based on those facts, was D's conduct honest or dishonest by the standards of the reasonable man?
- **Intention to permanently deprive**, from s6, there does not have to be a permanent deprivation in fact. s6(1) states D has an IPD if he treats the property as his own to dispose of regardless of the owner's rights. (*Lavender).*

Application of the law to Alfred

- Keeping the overpayment is likely to be theft under s1 Theft Act 1968.
- Keeping the money is appropriation by consent under s3 as even though the cashier handed the money over to him, retaining the money and failing to give it back would be an appropriation.
- Money is classed as property under s4.
- Property received by mistake is classed as belonging to another despite the fact that it was in Alfred's possession, as the person who gave the money by mistake retains a proprietary interest in it and D is under a duty to return it.
- None of the honesty situations under s2 apply, therefore the Ivey test is applied. Alfred is likely to be classed as dishonest under this test. Alfred's knowledge of the facts were that he was overpaid money and he realised this as it states that he 'knew he had been given too much change' yet he 'took it and left the store' and he admitted as much in his interview record. Based on this, the reasonable man would consider his actions dishonest.
- Alfred intends to permanently deprive the store of the money as he walked out of the store with it, clearly intending not to give it back.

Analyse the likely outcome of the case

- Alfred is likely to be found guilty of theft of the £20 as he has kept money that he received by mistake, and it would appear that that he knew there had been a mistake and did not return the money. The fact that he knowingly walked out of the store with the money shows the intention to permanently deprive.

Credit any evaluative commentary.

- the Theft Act 1968 contains no definition of "dishonest", which has led to confusion as to how it is to be interpreted in the law, potentially leading to inconsistent application
- the definition of "appropriates" is too wide, covering situations such as temporary use

Identify the relevant defence (intoxication) and demonstrate an understanding of the law relating to that defence.

In order to plead intoxication:

- There is a distinction between voluntary and involuntary intoxication.
- There is a further distinction between specific intent crimes (those whose *mens rea* is intention only) and basic intent crimes (those whose *mens rea* is intention or recklessness).
- Successfully pleading voluntary intoxication for specific intent crimes results in the offence being lowered to its basic intent equivalent (*R v Lipman*), and a drunken intent is still an intent. Where there is no basic intent equivalent, the defendant will be acquitted.
- Voluntary intoxication is no defence for basic intent crimes as becoming intoxicated itself is a reckless course of conduct and the *mens rea* is formed at that point (*R v Majewski*).

Application of the law to Alfred

- Alfred has become voluntarily intoxicated as we are told he has been drinking 'a variety of alcoholic drinks' with friends all afternoon.
- Theft is a specific intent offence which means that if successful, Alfred will be found not guilty as there will be no basic intent equivalent.
- It appears that despite his intoxicated state, Alfred formed a clear dishonest intent to keep the money as it says that 'knowing he had been given too much change, he took his shopping and left the store'. Furthermore, the records from the case file state that 'although he was drunk, he knew what he was doing at the time he decided to keep the extra change'
- On this basis, it is clear that Alfred had a clear intent and his voluntary intoxication will not provide a defence since a drunken intent is still an intent.

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